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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/036,236
Filing Date: March 06, 1998
Appellant(s): OLIVER ET AL.

Steven M. Hoffberg
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/26/2007 appealing from the Office action mailed 8/25/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

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(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

Claims 35-62 are rejected under 35 U.S.C. 103(a) as being obvious over Exhibit O in view of Teper (U.S. 5,815,665). The Appeal Brief incorrectly states on page 29 that, claims 36-62 are rejected under 35 U.S.C. 103(a) as being obvious over Exhibit O in view of Teper (U.S. 5,815,665).

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

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(8) Evidence Relied Upon

Non-Patent Literature

"Clickshare(sm) alpha up; 'test drives' available"; Newshare Corp. Release; October 16, 1995. (Exhibit O – Scanned into EDAN 6/3/2005)

"Questions often asked by prospective Clickshare publishers"; Newshare Release; Copyright 1995. (Exhibit L – Scanned into EDAN 6/3/2005)

Patent(s)

5,815,665

Teper

9-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8, 11-25, and 28-34, 63, 64, 66-72, and 74-82 are rejected under 35 U.S.C. 102(b) as being anticipated by Exhibit O.

Note: Exhibits A-P are printed publications which each describes the Newshare/Clickshare invention and are dated more than one year prior to March 7, 1997. Accordingly, each Exhibit qualifies as prior art under 35 USC 102(b).

Exhibit O discloses, with reference to claim 1:

Preamble

Clickshare is a complete, distributed, user-management system which provides the only true third-party validation of web usage. It differentiates "eyeballs" rather than just counting them. It protects personal privacy and the publisher/subscriber relationship.

Element (a)

"Clickshare's versatile architecture is core technology for a worldwide free market for digital communications -- a true information exchange," said Densmore.

Element (b)

Clickshare has two principal components, Oliver says. Clickshare-enhanced Web server software runs on publishers' computers as a primary piece of controlling software or as an adjunct to other UNIX-based server software. It logs user registration, authentication, personalization and micro- transactions.

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Each user has a single "home base" at a Publishing Member (likely to be a local or specialty publication with whom they have a continuing relation). Clickshare users register just once with their home base, providing credit-card information by phone, fax, mail or secure Internet connection. At no time do credit-card numbers or other personal information traverse the Clickshare system.

Element (c)

Clickshare tracks content served to users regardless of the location of their "home" Publishing Member. Aggregate micro- charges, settled monthly or more frequently, allocating commissions, royalties and transaction fees, thus form the basis of a system resembling an ATM network.

Element (d)

A portion of all fees accumulated by a user for all visited Clickshare-enabled sites is retained by the user's home Publishing Member. This is termed a "referral commission." And Newshare retains a portion for its role in tracking and clearing transactions. At least 50 percent of each transaction goes to the content owner as a royalty.

Element (e)

Clickshare(SM) permits consumers to access information on multiple, unrelated Internet Web servers with a single ID and password. It gives publishers revenues not only from their own information but from the information their users buy elsewhere. And it gives advertisers the best way to measure web traffic by specific user.

Element (f)

The second piece of essential software, the Clickshare token-validation service (TVS) server, is run by Newshare Corp. or licensees. It creates and validates authentication tokens, brokers non-personal user preferences among publishers, and maintains "page visit" records from multiple independent sites sortable by anonymous user number, page visited and site ID.

Exhibit O further discloses:

Regarding claim 2

The Clickshare-enhanced Web Server -- which is browser independent -- is provided to Member Publishers by Newshare Corp. free under license. Newshare's back-end service network exchanges data with the Internet servers of Clickshare-enabled sites, validating users and tracking all discrete page accesses -- chargeable or free -- across every participating site.

Clickshare leaves to each Publishing Member the marketing contours of its relationship to its customers. Each Publishing Member is thus free to use its own model for user subscription or per-page rates.

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Regarding claim 3

Thereafter, a user begins a Clickshare(sm) session as simply as logging in to the online world in the first place. The user must enter a personal ID and password just once during each session. In response, their home Publishing Member provides them a personalized, updated, jumpoff page of useful links, based on the personal topical-interest profile the user provided at initial registration.

Regarding claim 4

Thereafter, a user begins a Clickshare(sm) session as simply as logging in to the online world in the first place. The user must enter a personal ID and password just once during each session. In response, their home Publishing Member provides them a personalized, updated, jumpoff page of useful links, based on the personal topical-interest profile the user provided at initial registration.

Regarding claim 5

The second piece of essential software, the Clickshare token-validation service (TVS) server, is run by Newshare Corp. or licensees. It creates and validates authentication tokens, brokers non-personal user preferences among publishers, and maintains "page visit" records from multiple independent sites sortable by anonymous user number, page visited and site ID.

"At no time does Clickshare know a user's name or demographic profile," says Oliver. "Only the user's home-base publisher has this information."

As they browse effortlessly to Clickshare-enabled and other sites, users can be confident that the link between their identity and their tracks does not go beyond their home Publisher. Clickshare provides mechanisms to establish charge limits and receive periodic reports of charges.

Regarding claim 6

Thereafter, a user begins a Clickshare(sm) session as simply as logging in to the online world in the first place. The user must enter a personal ID and password just once during each session. In response, their home Publishing Member provides them a personalized, updated, jumpoff page of useful links, based on the personal topical-interest profile the user provided at initial registration.

Regarding claim 7

The second piece of essential software, the Clickshare token-validation service (TVS) server, is run by Newshare Corp. or licensees. It creates and validates authentication tokens, brokers non-personal user preferences among publishers, and maintains "page visit" records from multiple independent sites sortable by anonymous user number, page visited and site ID.

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Regarding claim 8

The Clickshare-enhanced Web Server -- which is browser independent -- is provided to Member Publishers by Newshare Corp. free under license. Newshare's back-end service network exchanges data with the Internet servers of Clickshare-enabled sites, validating users and tracking all discrete page accesses -- chargeable or free -- across every participating site.

Regarding claim 11

The Clickshare-enhanced Web Server -- which is browser independent -- is provided to Member Publishers by Newshare Corp. free under license. Newshare's back-end service network exchanges data with the Internet servers of Clickshare-enabled sites, validating users and tracking all discrete page accesses -- chargeable or free -- across every participating site.

Regarding claim 12

The Clickshare-enhanced Web Server -- which is browser independent -- is provided to Member Publishers by Newshare Corp. free under license. Newshare's back-end service network exchanges data with the Internet servers of Clickshare-enabled sites, validating users and tracking all discrete page accesses -- chargeable or free -- across every participating site.

Regarding claim 13

Clickshare(SM) permits consumers to access information on multiple, unrelated Internet Web servers with a single ID and password. It gives publishers revenues not only from their own information but from the information their users buy elsewhere. And it gives advertisers the best way to measure web traffic by specific user.

Each user has a single "home base" at a Publishing Member (likely to be a local or specialty publication with whom they have a continuing relation). Clickshare users register just once with their home base, providing credit-card information by phone, fax, mail or secure Internet connection. At no time do credit-card numbers or other personal information traverse the Clickshare system.

Clickshare tracks content served to users regardless of the location of their "home" Publishing Member. Aggregate micro- charges, settled monthly or more frequently, allocating commissions, royalties and transaction fees, thus form the basis of a system resembling an ATM network.

A portion of all fees accumulated by a user for all visited Clickshare-enabled sites is retained by the user's home Publishing Member. This is termed a "referral commission." And Newshare retains a portion for its role in tracking and clearing transactions. At least 50 percent of each transaction goes to the content owner as a royalty.

Regarding claim 14

The second piece of essential software, the Clickshare token-validation service (TVS) server, is run by Newshare Corp. or licensees. It creates and validates authentication tokens, brokers non-

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personal user preferences among publishers, and maintains "page visit" records from multiple independent sites sortable by anonymous user number, page visited and site ID.

Regarding claim 15

Thereafter, a user begins a Clickshare(sm) session as simply as logging in to the online world in the first place. The user must enter a personal ID and password just once during each session. In response, their home Publishing Member provides them a personalized, updated, jumpoff page of useful links, based on the personal topical-interest profile the user provided at initial registration.

As they browse effortlessly to Clickshare-enabled and other sites, users can be confident that the link between their identity and their tracks does not go beyond their home Publisher. Clickshare provides mechanisms to establish charge limits and receive periodic reports of charges.

The Clickshare-enhanced Web Server -- which is browser independent -- is provided to Member Publishers by Newshare Corp. free under license. Newshare's back-end service network exchanges data with the Internet servers of Clickshare-enabled sites, validating users and tracking all discrete page accesses -- chargeable or free -- across every participating site.

Clickshare tracks content served to users regardless of the location of their "home" Publishing Member. Aggregate micro- charges, settled monthly or more frequently, allocating commissions, royalties and transaction fees, thus form the basis of a system resembling an ATM network.

Regarding claim 16

Beyond the model of payment for access to information, because it tracks known users (rather than Internet Protocol (IP) numbers), Clickshare may also serve as a third-party circulation/viewership auditing mechanism for the advertising and publishing industry, while leaving to users control of release of demographic and other data, and respecting their desires for privacy.

Regarding claim 17

As they browse effortlessly to Clickshare-enabled and other sites, users can be confident that the link between their identity and their tracks does not go beyond their home Publisher. Clickshare provides mechanisms to establish charge limits and receive periodic reports of charges.

The Clickshare-enhanced Web Server -- which is browser independent -- is provided to Member Publishers by Newshare Corp. free under license. Newshare's back-end service network exchanges data with the Internet servers of Clickshare-enabled sites, validating users and tracking all discrete page accesses -- chargeable or free -- across every participating site.

A portion of all fees accumulated by a user for all visited Clickshare-enabled sites is retained by the user's home Publishing Member. This is termed a "referral commission." And Newshare retains a portion for its role in tracking and clearing transactions. At least 50 percent of each transaction goes to the content owner as a royalty.

Regarding claims 18-25, and 28-34

These claims are method claims which closely parallel system claims 1-8, and 11-17. These claims are rejected on grounds similar to those discussed above with regard to such system claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9, 10, 26, 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Exhibit

O in view of Exhibit L.

Regarding claims 9 and 26

Exhibit O does not disclose the return of pricing and service-class information.

However, Exhibit L discloses:

Q: What about charging different prices to different users and for different types of information?

A: No problem. Embedded in the Clickshare(sm) system is the ability to delineate "page classes" which have different retail values. This permits a Publishing Member, for example, to have "tiers" of service. One tier might be free content open to the public. The next "tier" might be content open at no charge solely to Clickshare(sm) enabled users. Another "tier" might be open to the Publisher Member's own local users for a monthly flat subscription fee -- and charged "by the click" to remote Clickshare(sm) users. And a final tier might be charged to all users, but at a different price depending whether the user is local or remote. Since the Clickshare(sm) server can identify the "class" of an incoming user, it can price-differentiate its service to that user.

It would have been obvious to one of ordinary skill in the art to have provided the system and method already disclosed in Exhibit O to have included the return of preference, pricing and service-class information about the requesting client in order to differentiate clients associated with service tiers for the purposes of access and billing.

Regarding claims 10 and 27

Neither Exhibit O nor Exhibit L teach utilizing User Datagram Protocol to accomplish acceptance.

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However, the further modification of the combined system and method of Exhibits O and L would have been an obvious matter of protocol choice to one of ordinary skill in the art which would not have otherwise affected or effected the system and method already taught.

Claims 35-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Exhibit O in view of Teper (U.S. Patent No. 5,815,665).

Although Exhibit O discloses a token validation service, Exhibit O is silent to a challenge-response protocol.

Teper, however, in a similar system and method (col. 1, lines 7-11), teaches a verification means including a token and an authentication server adapted to allow each provider to determine if a particular client is a member of the system, verify that the client has authenticated at his home provider, and determine this client's access or service privileges and criteria (col. 5 lines 30-37 and 45-48; col. 6 lines 53-61). The verification means employs a challenge-response protocol (see col. 3, lines 5-52).

It would have been obvious to one of ordinary skill in the art to have provided the system and method disclosed in Exhibit O to have included the challenge-response protocol taught by Teper in order to have realized the validation of the tokens disclosed in Exhibit O using a known challenge-response protocol of the type taught by Teper.

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Claims 65, and 73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Exhibit O and Teper (U.S. Patent No. 5,815,665), as applied to claims 64 and 71, respectively, and further in view of Exhibit L.

The combination of Exhibit O and Teper does not provide a billing viewer application.

Exhibit L, however, discloses that "Clickshare(sm) is designed to bundle dozens or even hundreds of individual information purchases during a monthly pan and then obtain the on-line consumer's approval to charge them".

It would have been obvious to one of ordinary skill in the art to have provided the combination of Exhibit O and Teper to have included a billing viewer application in order that a consumer may first view an itemization of recorded purchases prior to authorizing the charge for such purchases to a credit network.

(10) Response to Argument

Introduction

The Appellant argues (Page 30 of Brief), the micropayment system was not implemented at the time of writing, and therefore the reference (Exhibit O) cannot be interpreted to “disclose” that which it admits does not exist. Furthermore, the Appellant argues that the reference (Exhibit O), at best, is an invitation to experiment, and not a recipe for reducing the invention to practice, in a manner that would enable one of ordinary skill in the art to practice the invention.

The Examiner notes, Exhibit O was publicly available October 26, 1995, more than one year previous to the effective filing date of the instant application. Exhibit O details Newshare Corp's efforts in “...shipping to selected publishers this week the alpha version of it breakthrough Clickshare(SM) system to track and settle Internet wide micro-transactions.” Therefore, not only was the Clickshare(SM) system being offered to selected participants more than one year previous to the effective filing date of the instant application, the details of said offerings were publicly disclosed via corporate press releases.

The Examiner further notes, to anticipate a claim, the reference must teach every element of the claims either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir.1987). Exhibit O explicitly teaches the micropayment system of the instant invention in as complete detail as is recited in the pending claims.

The Appellant argues (Page 31 of Brief), the invention was intended for use over a public network, such as the Internet, and the mere theoretical aggregation of aspects and intended outcomes is insufficient to define a workable embodiment.

The Examiner notes, the explicit use of the "Internet" is not recited in the rejected independent claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). However, as clearly demonstrated in Exhibit O, "Clickshare removes one of the biggest barriers to the evolution of the Internet by giving users universal-ID access to a free market for digital information," said Bill Densmore, Newshare president and cofounder."

The Appellant argues (Page 31 of Brief), Exhibit O does not enable the practice of the present invention, and merely describes a high level architecture without sufficient specificity

The Examiner notes, the disclosure of Exhibit O was in the public's possession more than one year previous to the effective date of the instant invention. Such possession was enabled and effected because one of ordinary skill in the art could have combined the publication's description of the invention with his [or her] own knowledge to make the claimed invention." *In re Donohue*, 766 F.2d 531, 226 USPQ 619 (Fed. Cir. 1985).

Furthermore, when the reference relied on expressly anticipates or makes obvious all of the elements of the claimed invention, the reference is presumed to be operable. Once such a reference is found, the burden is on applicant to

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provide facts rebutting the presumption of operability. In re Sasse, 629 F.2d 675, 207 USPQ 107 (CCPA 1980). See also MPEP § 716.07. The Appellant has not met said burden.

Claims 1-8, 11-25, 28-34, 63-64, 66-72 and 74-82 are rejected under 35 U.S.C.

102(b) as being anticipated by Exhibit O.

Referring to claims 1 and 5. The Appellant argues (Pages 33-34 of Brief), Exhibit O fails to teach or suggest the architectural features of the settling means for accessing a respective home provider registration database, or a separation of the accounting database and the registration database. The Appellant admits, that this issue was addressed on page 17 of the Final Office Action

The Examiner notes, Exhibit O discloses a system for tracking content served to users regardless of the location of their "home" Publishing Member. Within the system disclosed by Exhibit O, micro- charges are settled monthly or more frequently forming the basis of a system resembling an ATM network.

Where means plus function language is used to define the characteristics of a machine or manufacture invention, such language must be interpreted to read on only the structures or materials disclosed in the specification and "equivalents thereof" that correspond to the recited function. Two en banc decisions of the Federal Circuit have made clear that the USPTO is to interpret means plus function language according to 35 U.S.C. § 112, sixth paragraph. In re Donaldson, 16 F.3d 1189, 1193, 29 USPQ2d 1845, 1848 (Fed. Cir.1994) (en banc); In re Alappat, 33 F.3d 1526, 1540, 31 USPQ2d 1545, 1554 (Fed. Cir. 1994) (en banc). The specification of the instant invention does not explicitly set forth any structure to perform the recited settling means. Therefore, the settling means has been given is broadest reasonable interpretation in light and

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consistent with the supporting disclosure and has been interpreted to be equivalent to the complete, distributed, user-management system set forth in Exhibit O.

The Appellant argues (Page 34 of Brief), Exhibit O fails to assure that the outside providers are paid for access.

The Examiner notes, Exhibit O teaches a "referral commission," whereby at least 50 percent of each transaction goes to the content owner as a royalty. The payment scheme detailed in Exhibit O is contractual whereby publishers are charged to join the Clickshare(SM) system. This contractual relationship is sufficient to "assure" the payment to the participating publishers.

The Appellant argues, (Page 34 of Brief), Exhibit O does not teach the verification means set forth in element "e" of claim 1 and that Exhibit O does not provide an enabling disclosure of any transaction-handling system in accordance with claim 1.

The Examiner notes, element "f" not "e" is directed towards said verification means. This limitation has been fully addressed on page 7 of the Final Office Action. With reference to appellants enablement argument, when the reference relied on expressly anticipates or makes obvious all of the elements of the claimed invention, the reference is presumed to be operable. Once such a reference is found, the burden is on applicant to provide facts rebutting the presumption of operability. In re Sasse, 629 F.2d 675, 207 USPQ 107 (CCPA 1980). See also MPEP § 716.07. The Appellant has not met said burden.

Referring to claims 2, 3-4, 6-8 and 11-17. The Appellant argues (Pages 36-39 of Brief), Exhibit O fails to teach certain elements of the claimed invention. Appellant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Referring to claims 18 and 22. The Appellant argues (Page 39-40 of Brief), Exhibit O does not provide an enabling disclosure of any method for managing client accounts and controlling access to resources over data networks in accordance with claim 18.

With reference to appellants enablement argument, when the reference relied on expressly anticipates or makes obvious all of the elements of the claimed invention, the reference is presumed to be operable. Once such a reference is found, the burden is on applicant to provide facts rebutting the presumption of operability. In re Sasse, 629 F.2d 675, 207 USPQ 107 (CCPA 1980). See also MPEP § 716.07. The Appellant has not met said burden.

The communication network disclosed in Exhibit O is not insecure as alleged by the Appellant. Exhibit O clearly discusses the protection of personal privacy and the publisher/subscriber relationship.

Referring to claims 19-21, 23-25 and 28-34. The Appellant argues (Pages 40-44 of Brief), Exhibit O fails to teach certain elements of the claimed invention. Appellant's

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arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Referring to claims 35-36 and 47. The Arguments set forth with respect to claims 35-36 and 47 (Pages 44-46 of Brief) are similar to those set forth with respect to claims 1 and 5, and are addressed in full above.

Additionally, the Appellant argues (Page 45 of Brief) that Exhibit O does not teach a challenge-response authentication/validation protocol.

This argument is misplaced. Claims 35-36 and 47 were rejected under Exhibit O in view of Teper. The Examiner has previously mentioned that Exhibit O is silent to a challenge-response protocol. Teper, however, in a similar system and method (col. 1, lines 7-11), teaches a verification means including a token and an authentication server adapted to allow each provider to determine if a particular client is a member of the system, verify that the client has authenticated at his home provider, and determine this client's access or service privileges and criteria (col. 5 lines 30-37 and 45-48; col. 6 lines 53-61). The verification means employs a challenge-response protocol (see col. 3, lines 5-52). It would have been obvious to one of ordinary skill in the art to have provided the system and method disclosed in Exhibit O to have included the challenge-response protocol taught by Teper in order to have realized the validation of the tokens disclosed in Exhibit O using a known challenge-response protocol of the type taught by Teper.

Referring to claims 63 and 68. The Appellant argues (Page 46 of Brief), there is no teaching or suggestion in Exhibit O as to how security can be achieved absent a trusted network.

The Examiner notes, the communication network disclose in Exhibit O is not insecure as alleged by the Appellant. Exhibit O clearly discusses the protection of personal privacy and the publisher/subscriber relationship.

The Appellant argues (Page 46 of Brief), Exhibit O fails to teach or suggest at least "an authentication protocol..."

The Examiner notes, Exhibit O explicitly teaches authentication, personalization and micro-transactions (page 2 of Exhibit O),

Referring to claim 64. The Appellant argues (Pages 46-47 of Brief), Exhibit O fails to teach certain elements of the claimed invention. Appellant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Referring to claims 66-67 and 69-70. With reference to appellants enablement argument (Page 47-48 of Brief), when the reference relied on expressly anticipates or makes obvious all of the elements of the claimed invention, the reference is presumed to be operable. Once such a reference is found, the burden is on applicant to provide

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facts rebutting the presumption of operability. In re Sasse, 629 F.2d 675, 207 USPQ 107 (CCPA 1980). See also MPEP § 716.07. The Appellant has not met said burden.

Referring to claims 71-72 and 74-80. The Arguments set forth with respect to claims 71-72 and 74-78 (Pages 48-51 of Brief) are similar to those set forth above, and are addressed in full above.

Referring to claim 81-88. The Appellant argues (Pages 51-54 of Brief), Exhibit O fails to teach certain elements of the claimed invention. Appellant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Claims 9-10 and 26-27 are rejected under 35 U.S.C. 103(a) as being obvious over Exhibit O in view of Exhibit L.

Referring to claim 9. The Appellant argues (Page 55 of Brief), there is no evidence that Exhibit L was publicly released in 1995, and therefore it may not be a prior art reference.

The Examiner notes, in the "Third Declaration of William P. Densmore Jr.," Mr. Densmore confirmed that Exhibit L was printed on May 25, 2005, more than one year previous to the effective date of the instant application.

Referring to claim 10. The Appellant argues (Page 55 of Brief), the Examiner has provided no sufficient argument detailing the User Datagram Protocol for implementing the acceptance means.

The Examiner previously noted, neither Exhibit O nor Exhibit L teach utilizing User Datagram Protocol to accomplish acceptance. However, the further modification of the combined system and method of Exhibits O and L would have been an obvious matter of protocol choice to one of ordinary skill in the art which would not have otherwise affected or effected the system and method already taught.

Referring to claim 26. The Arguments set forth with respect to claim 26 are similar to those set forth above, and are addressed in full above.

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Referring to claim 27. The Arguments set forth with respect to claim 27 are similar to those set forth above, and are addressed in full above.

Claims 36-62 are rejected under 35 U.S.C. 103(a) as being obvious over Exhibit O in view of Teper.

Referring to claims 37-46 and 48. The Appellant argues (Pages 57-60 of Brief), Exhibit O in view of Teper fails to teach certain elements of the claimed invention. Appellant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

The Appellant makes note to additional declarations (Page 57 of Brief), including a Declaration of David M. Oliver, William P. Densmore, Jr., and Michael J. Calahan, dated August 12, 2004, submitted on December 2, 2004.

The Examiner notes, the additional declaration mentioned above was not timely presented. It was submitted after the Final Office Action mailed September 2, 2004, and was not submitted with a request for continued examination (RCE) under 37 CFR 1.114. A request for continued examination (RCE) was later filed on March 2, 2005, however the only submission checked on the request for continued examination transmittal form was (1. b. i.) "Amendment/Reply." and not (1. b. ii.) "Affidavit(s)/Declaration(s)."

Referring to claims 49 and 60-62. With reference to appellants enablement argument (Page 61 of Brief), when the reference relied on expressly anticipates or

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makes obvious all of the elements of the claimed invention, the reference is presumed to be operable. Once such a reference is found, the burden is on applicant to provide facts rebutting the presumption of operability. In re Sasse, 629 F.2d 675, 207 USPQ 107 (CCPA 1980). See also MPEP § 716.07. The Appellant has not met said burden.

Referring to claims 50-59. The Appellant argues (Pages 61-64 of Brief), Exhibit O in view of Teper fails to teach certain elements of the claimed invention. Appellant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

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Claims 65 and 73 are rejected under 35 U.S.C. 103(a) as being obvious over

Exhibit O in view of Teper as applied to claims 64 and 71, and further in view of

Exhibit L.

The Arguments set forth with respect to claims 65 and 73 are similar to those set forth above, and are addressed in full above.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Matthew S Gart
Primary Examiner
AU 3625
June 26, 2007

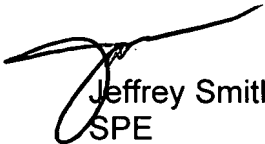
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